Filed 12/17/20 Lora v. Partner Medical Products, Inc. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

PERLA LORA, Plaintiff and Respondent, v. PARTER MEDICAL PRODUCTS, INC., et al. Defendants and Appellants.	B304027 (Los Angeles County Super. Ct. No. 19STCV16619)

APPEAL from an order of the Superior Court of Los Angeles County, Steven J. Kleifield, Judge. Affirmed.

Cummings & Franck, Lee Franck and Scott O. Cummings, for Plaintiff and Respondent.

Mohajerian, Al Mohajerian and Ann Anooshian, for Defendants and Appellants.

INTRODUCTION

Defendants Parter Medical Products, Inc. (PMP) and Hormoz Foroughi (collectively, defendants) appeal an order granting attorneys' fees to plaintiff Perla Lora after the trial court found defendants filed a frivolous motion to strike Lora's complaint under Code of Civil Procedure section 425.16, the anti-SLAPP statute.[1] Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In her complaint, Lora alleged a variety of causes of action arising out of her employment at PMP, including: racial discrimination; gender discrimination; hostile work environment; retaliation; failure to prevent discrimination, harassment, and retaliation; wrongful termination; failure to provide meal and rest breaks; retaliation for whistleblowing under Labor Code section 1102.5; negligent hiring and retention; intentional infliction of emotional distress; and violation of Business and Professions Code section 17200 et seq. Lora's complaint alleged, among other things, that Foroughi, the owner and president of PMP, made the following statements: "Mexicans think they're still in Mexico"; "Mexicans come to have babies, they want stuff but do nothing in return"; and "get out of my warehouse, you dirty Mexican, you're going to get my floor dirty." Lora further alleged she was "actually and/or constructively discharged from [PMP] on approximately July 5, 2018."

Defendants filed an anti-SLAPP motion to strike all causes of action in the complaint except the causes of action for failure to provide meal and rest breaks and retaliation for whistleblowing under Labor Code section 1102.5. In their four-page

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1 SLAPP is the acronym for strategic lawsuit against public participation. All further undesignated statutory references are to the Code of Civil Procedure.

memorandum of points and authorities, defendants argued the alleged statements listed above concerned matters of public interest because they "relate[d] to immigration of individuals from Mexico, and possible reasons for such immigration." They further contended Lora could not establish a probability that she will succeed on the merits, citing their demurrer for "an in-depth discussion of the weaknesses of [Lora's] complaint." In opposition, Lora asserted the motion was frivolous. She argued the alleged statements did not constitute protected activity under the anti-SLAPP statute and, even if they did, the evidence[2] demonstrated a probability of prevailing on the merits. Defendants did not file a reply. The trial court denied the anti-SLAPP motion, holding the alleged comments were not made in connection with a public issue or an issue of public interest.

Lora moved for $66,750 in attorneys' fees and $227.65 in costs for opposing the anti-SLAPP motion, contending the motion was frivolous. The trial court agreed. After reducing plaintiff's counsel's hourly rate from $750 to $500, and reducing hours spent for appearing at the hearings from seven to four, the experienced trial judge awarded Lora a total of $43,000 in attorneys' fees and $227.65 in costs. Defendants appealed only from the attorneys' fees order.

DISCUSSION

1. Legal Standard

"The anti-SLAPP statute requires the trial court to award reasonable attorneys' fees to a prevailing plaintiff pursuant to

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2 Lora submitted three witness declarations in support of her opposition to defendants' special motion to strike: two former employees and one current employee (on disability leave) declared Foroughi racially discriminated against, and sexually harassed, Lora and other employees at PMP.

section 128.5 when the court determines that a defendant's anti-SLAPP motion was 'frivolous or . . . solely intended to cause unnecessary delay.' (§ 425.16, subd. (c)(1) ['shall' award].) Frivolous in this context means that any reasonable attorney would agree the motion was totally devoid of merit. [Citation.] An order awarding attorneys' fees pursuant to section 128.5, as incorporated in section 425.16, subdivision (c), is reviewed under the abuse of discretion test. [Citation.]" (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 450 (*Gerbosi*).)[3]

2. Appealability

An order denying an anti-SLAPP motion is immediately appealable (§ 904.1, subd. (a)(13)), but defendants did not appeal the court's order denying their anti-SLAPP motion. Instead, they challenge the court's later order granting attorneys' fees, which defendants argue was an appealable order for monetary sanctions over $5,000. (§§ 425.16, subd. (i), 904.1, subd. (a)(12).) We agree.

As stated above, under section 425.16, subdivision (c)(1), "[i]f the trial court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney[s'] fees to a plaintiff prevailing on the motion, pursuant to section 128.5." "(Because an award of attorney[s'] fees to a plaintiff prevailing on the motion is to be made 'pursuant to section 128.5,' and only if the motion is 'frivolous or is solely intended to cause unnecessary delay,' if the amount awarded exceeds $5,000, it is appealable

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3 Defendants argue our review is de novo because the issues amount to statutory construction and questions of law. We disagree. The only issues on appeal are whether the trial court acted within its discretion in finding defendants' anti-SLAPP motion met the statutory definition of "frivolous," and whether the amount of fees awarded was appropriate.

pursuant to section 904.1(a)(12) [immediate appeal may be taken from order directing payment of monetary sanctions by a party or an attorney for a party if amount exceeds $5,000].)" (*Doe v. Luster* (2006) 145 Cal.App.4th 139, 146.)

3. The Trial Court Did Not Abuse Its Discretion

Defendants contend: (1) their anti-SLAPP motion was not frivolous because the alleged statements concerned an issue of public interest and thus, the motion had merit; and (2) the amount of attorneys' fees awarded was unreasonable. We disagree for the reasons discussed below.

First, the trial court acted within its discretion in concluding the motion was frivolous because "no reasonable attorney would have believed there was merit to the attempt to strike" most of Lora's complaint. (*Gerbosi, supra*, 193 Cal.App.4th at p. 450.) To constitute protected speech under the anti-SLAPP statute, defendants must demonstrate the alleged comments in support of Lora's hostile work environment claim (i.e., "Mexicans think they're still in Mexico"; "Mexicans come to have babies, they want stuff but do nothing in return"; and "get out of my warehouse, you dirty Mexican, you're going to get my floor dirty") made in a private workplace "contribute[d] to the public debate" on "a subject of widespread public interest." (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 150 (*FilmOn*).) Defendants must also demonstrate the causes of action they sought to strike arose from the alleged protected activity. (*Gerbosi, supra,* 193 Cal.App.4th at p. 443.) They did neither.

During the meet-and-confer process, Lora's counsel warned defendants' counsel that "an anti-[SLAPP] motion would be frivolous . . . and we will be seeking attorney[s'] fees and costs if it is brought" and explained "we did not plead that there was a discussion about immigration in general, like it was some sort of political discussion. The allegations are discrimination and

harassment claims based on national origin, among other claims." In response, defendants filed the anti-SLAPP motion, claiming the alleged comments concerned a matter of public interest because they "relate to immigration of individuals from Mexico, and possible reasons for such immigration." But, defendants did not explain how the alleged private statements are equivalent to a broader discussion on immigration. (See *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, 601 ["If we were to accept [defendant's] argument that we should examine the nature of the speech in terms of generalities instead of specifics, then nearly any claim could be sufficiently abstracted to fall within the anti-SLAPP statute"]; see also *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 625 ["At a sufficiently high level of generalization, any conduct can appear rationally related to a broader issue of public importance. What a court scrutinizing the nature of speech in the anti-SLAPP context must focus on is the speech at hand, rather than the prospects that such speech may conceivably have indirect consequences for an issue of public concern. [Citations.]"]) Nor did defendants address how the alleged comments contributed to public discussion or resolution of the issue. (*FilmOn.com, supra,* 7 Cal.5th at pp. 150-152.) Moreover, defendants failed to address why causes of action unrelated to the alleged racist comments, such as gender/sex discrimination, should be stricken.

Defendants' reliance on *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871 (*Wilson*), decided three days after defendants filed their anti-SLAPP motion, is misplaced. We note defendants neither filed a motion for reconsideration of their anti-SLAPP motion in light of the new authority, nor informed the trial court of the *Wilson* decision in their opposition to Lora's motion for attorneys' fees. In any event, *Wilson* does not help defendants. There, our Supreme Court held the anti-SLAPP statute may apply to employment discrimination and retaliation

claims, and those claims are not excluded from the anti-SLAPP statute just because plaintiff alleges an improper motive for defendant's protected activity. (*Wilson, supra*, 7 Cal.5th at pp. 888-890.) It concluded "that for anti-SLAPP purposes discrimination and retaliation claims arise from the adverse actions allegedly taken, notwithstanding the plaintiff's allegation that the actions were taken for an improper purpose. If conduct that supplies a necessary element of a claim is protected, the defendant's burden at the first step of the anti-SLAPP analysis has been carried, regardless of any alleged motivations that supply other elements of the claim." (*Id.* at p. 892.) It further explained, however, that "absent unusual circumstances, a garden-variety employment dispute concerning a nonpublic figure will implicate no public issue. [Citations.] Workplace misconduct 'below some threshold level of significance is not an issue of public interest, even though it implicates a public policy.' [Citation.]" (*Id.* at p. 901.)

Here, as discussed above, Lora alleged Foroughi's statements subjected her to a hostile work environment. She also alleges a range of adverse employment actions, including "actual[] and/or constructive[] discharge[]," failure to promote, and failure to "give [her] pay raises." Unlike in *Wilson*, where the defendant demonstrated its termination of an employee implicated its speech-related right as a news provider to choose not to have writers who plagiarize (*Wilson, supra,* 7 Cal.5th at pp. 897, 899), here, defendants fail to link the alleged adverse employment actions to any purported speech-related rationale. (See *id.* at p. 890 ["to carry its burden at the first step, the defendant in a discrimination suit must show that the complained-of adverse action, in and of itself, is an act in furtherance of its speech or petitioning rights. Cases that fit that description are the exception, not the rule."].) We therefore conclude, even post-*Wilson*, the trial court was well within its

discretion in holding no reasonable attorney would believe an anti-SLAPP motion was warranted.[4]

Second, defendants failed to show the attorneys' fee award was unreasonable. We review a trial court's attorneys' fees award for abuse of discretion, and we presume that the trial court considered all appropriate factors in selecting the lodestar and applying a multiplier. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1249-1250.) The trial judge is in the best position to determine the value of professional services rendered in his or her court. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The award will not be disturbed unless we are convinced that it is clearly wrong. (*Ibid.*)

In support of her request for attorneys' fees, Lora's counsel submitted a declaration attaching time records indicating he spent 89 hours opposing the anti-SLAPP motion and litigating the attorneys' fee application. In opposition, defendants argued Lora should not have spent time obtaining witness declarations in support of her opposition to the anti-SLAPP motion, and that some of the fees requested were in connection with the demurrer and general motion to strike. The trial court held "it appears all fees were properly attributable to the relevant motions." It further held: "Anti-SLAPP motions operate much the same as a summary judgment proceeding, which requires significant time and preparation. The Court finds that the hours spent, based on the descriptions of the work performed, were reasonable. The Court reduces the 7 hours for appearance at the hearings to 4."

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4 In their opening brief, defendants list as a "ground" for their appeal that the "court also failed to find and did not discuss that there was 'bad faith' which is required by § 425.16(c)." By failing to develop this argument in their briefs, defendants forfeited this issue on appeal. (See, e.g., *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 ["parties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's [contentions] as [forfeited]. [Citation.]"].)

Regarding the hourly rate, the trial court noted it recently awarded attorneys' fees to Lora's counsel at an hourly rate of $500. It therefore applied that same rate here, rather than the $750 hourly rate Lora requested.

On appeal, defendants make the same arguments the trial court rejected below – that the witness declarations were unnecessary and time spent on the demurrer and general motion to strike may not be included in the award of fees (without pointing to any specific time entries). Defendants further contend, without any apparent basis, that a "competent attorney at the rate of $750 per hour should be able to oppose an anti-SLAPP motion within 5-7 hours." Defendants' conclusory contentions do not warrant reversal under the deferential standard of review applicable here. We find no abuse of discretion.

DISPOSITION

The order is affirmed. Lora is awarded her costs on appeal, including attorneys' fees. (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1499-1500 [because section 425.16, subdivision (c) authorizes an award of attorney fees to prevailing party without limitation, appellate attorney fees are also recoverable].) The proper amount of fees and costs shall be determined by the trial court.

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CURREY, J.

We concur:

WILLHITE, Acting P.J.

COLLINS, J.